

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5457

56th Legislature
1999 Regular Session

Passed by the Senate March 4, 1999
YEAS 42 NAYS 0

President of the Senate

Passed by the House April 8, 1999
YEAS 95 NAYS 0

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5457** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5457

Passed Legislature - 1999 Regular Session

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Costa, Zarelli, Hargrove and Long)

Read first time 02/15/1999.

1 AN ACT Relating to conditions involving diversion agreements for
2 juveniles under diversion programs authorized by state law prior to
3 January 1, 1999; amending RCW 13.40.080; and reenacting and amending
4 RCW 13.40.160.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 13.40.080 and 1997 c 338 s 70 are each amended to read
7 as follows:

8 (1) A diversion agreement shall be a contract between a juvenile
9 accused of an offense and a diversionary unit whereby the juvenile
10 agrees to fulfill certain conditions in lieu of prosecution. Such
11 agreements may be entered into only after the prosecutor, or probation
12 counselor pursuant to this chapter, has determined that probable cause
13 exists to believe that a crime has been committed and that the juvenile
14 committed it. Such agreements shall be entered into as expeditiously
15 as possible.

16 (2) A diversion agreement shall be limited to one or more of the
17 following:

18 (a) Community service not to exceed one hundred fifty hours, not to
19 be performed during school hours if the juvenile is attending school;

1 (b) Restitution limited to the amount of actual loss incurred by
2 the victim;

3 (c) Attendance at up to ten hours of counseling and/or up to twenty
4 hours of educational or informational sessions at a community agency.
5 The educational or informational sessions may include sessions relating
6 to respect for self, others, and authority; victim awareness;
7 accountability; self-worth; responsibility; work ethics; good
8 citizenship; literacy; and life skills. For purposes of this section,
9 "community agency" may also mean a community-based nonprofit
10 organization, if approved by the diversion unit. The state shall not
11 be liable for costs resulting from the diversionary unit exercising the
12 option to permit diversion agreements to mandate attendance at up to
13 ten hours of counseling and/or up to twenty hours of educational or
14 informational sessions;

15 (d) A fine, not to exceed one hundred dollars. In determining the
16 amount of the fine, the diversion unit shall consider only the
17 juvenile's financial resources and whether the juvenile has the means
18 to pay the fine. The diversion unit shall not consider the financial
19 resources of the juvenile's parents, guardian, or custodian in
20 determining the fine to be imposed; ((and))

21 (e) Requirements to remain during specified hours at home, school,
22 or work, and restrictions on leaving or entering specified geographical
23 areas; and

24 (f) Upon request of the victim or witness, requirements to refrain
25 from any contact with victims or witnesses of offenses committed by the
26 juvenile.

27 (3) In assessing periods of community service to be performed and
28 restitution to be paid by a juvenile who has entered into a diversion
29 agreement, the court officer to whom this task is assigned shall
30 consult with the juvenile's custodial parent or parents or guardian and
31 victims who have contacted the diversionary unit and, to the extent
32 possible, involve members of the community. Such members of the
33 community shall meet with the juvenile and advise the court officer as
34 to the terms of the diversion agreement and shall supervise the
35 juvenile in carrying out its terms.

36 (4)(a) A diversion agreement may not exceed a period of six months
37 and may include a period extending beyond the eighteenth birthday of
38 the divertee.

1 (b) If additional time is necessary for the juvenile to complete
2 restitution to the victim, the time period limitations of this
3 subsection may be extended by an additional six months.

4 (c) If the juvenile has not paid the full amount of restitution by
5 the end of the additional six-month period, then the juvenile shall be
6 referred to the juvenile court for entry of an order establishing the
7 amount of restitution still owed to the victim. In this order, the
8 court shall also determine the terms and conditions of the restitution,
9 including a payment plan extending up to ten years if the court
10 determines that the juvenile does not have the means to make full
11 restitution over a shorter period. For the purposes of this subsection
12 (4)(c), the juvenile shall remain under the court's jurisdiction for a
13 maximum term of ten years after the juvenile's eighteenth birthday.
14 Prior to the expiration of the initial ten-year period, the juvenile
15 court may extend the judgment for restitution an additional ten years.
16 The court may not require the juvenile to pay full or partial
17 restitution if the juvenile reasonably satisfies the court that he or
18 she does not have the means to make full or partial restitution and
19 could not reasonably acquire the means to pay the restitution over a
20 ten-year period. The county clerk shall make disbursements to victims
21 named in the order. The restitution to victims named in the order
22 shall be paid prior to any payment for other penalties or monetary
23 assessments. A juvenile under obligation to pay restitution may
24 petition the court for modification of the restitution order.

25 (5) The juvenile shall retain the right to be referred to the court
26 at any time prior to the signing of the diversion agreement.

27 (6) Divertees and potential divertees shall be afforded due process
28 in all contacts with a diversionary unit regardless of whether the
29 juveniles are accepted for diversion or whether the diversion program
30 is successfully completed. Such due process shall include, but not be
31 limited to, the following:

32 (a) A written diversion agreement shall be executed stating all
33 conditions in clearly understandable language;

34 (b) Violation of the terms of the agreement shall be the only
35 grounds for termination;

36 (c) No divertee may be terminated from a diversion program without
37 being given a court hearing, which hearing shall be preceded by:

38 (i) Written notice of alleged violations of the conditions of the
39 diversion program; and

1 (ii) Disclosure of all evidence to be offered against the diverttee;
2 (d) The hearing shall be conducted by the juvenile court and shall
3 include:

4 (i) Opportunity to be heard in person and to present evidence;
5 (ii) The right to confront and cross-examine all adverse witnesses;
6 (iii) A written statement by the court as to the evidence relied on
7 and the reasons for termination, should that be the decision; and
8 (iv) Demonstration by evidence that the diverttee has substantially
9 violated the terms of his or her diversion agreement.

10 (e) The prosecutor may file an information on the offense for which
11 the diverttee was diverted:

12 (i) In juvenile court if the diverttee is under eighteen years of
13 age; or

14 (ii) In superior court or the appropriate court of limited
15 jurisdiction if the diverttee is eighteen years of age or older.

16 (7) The diversion unit shall, subject to available funds, be
17 responsible for providing interpreters when juveniles need interpreters
18 to effectively communicate during diversion unit hearings or
19 negotiations.

20 (8) The diversion unit shall be responsible for advising a diverttee
21 of his or her rights as provided in this chapter.

22 (9) The diversion unit may refer a juvenile to community-based
23 counseling or treatment programs.

24 (10) The right to counsel shall inure prior to the initial
25 interview for purposes of advising the juvenile as to whether he or she
26 desires to participate in the diversion process or to appear in the
27 juvenile court. The juvenile may be represented by counsel at any
28 critical stage of the diversion process, including intake interviews
29 and termination hearings. The juvenile shall be fully advised at the
30 intake of his or her right to an attorney and of the relevant services
31 an attorney can provide. For the purpose of this section, intake
32 interviews mean all interviews regarding the diversion agreement
33 process.

34 The juvenile shall be advised that a diversion agreement shall
35 constitute a part of the juvenile's criminal history as defined by RCW
36 13.40.020(~~(+9)~~) (7). A signed acknowledgment of such advisement shall
37 be obtained from the juvenile, and the document shall be maintained by
38 the diversionary unit together with the diversion agreement, and a copy
39 of both documents shall be delivered to the prosecutor if requested by

1 the prosecutor. The supreme court shall promulgate rules setting forth
2 the content of such advisement in simple language.

3 (11) When a juvenile enters into a diversion agreement, the
4 juvenile court may receive only the following information for
5 dispositional purposes:

6 (a) The fact that a charge or charges were made;

7 (b) The fact that a diversion agreement was entered into;

8 (c) The juvenile's obligations under such agreement;

9 (d) Whether the alleged offender performed his or her obligations
10 under such agreement; and

11 (e) The facts of the alleged offense.

12 (12) A diversionary unit may refuse to enter into a diversion
13 agreement with a juvenile. When a diversionary unit refuses to enter
14 a diversion agreement with a juvenile, it shall immediately refer such
15 juvenile to the court for action and shall forward to the court the
16 criminal complaint and a detailed statement of its reasons for refusing
17 to enter into a diversion agreement. The diversionary unit shall also
18 immediately refer the case to the prosecuting attorney for action if
19 such juvenile violates the terms of the diversion agreement.

20 (13) A diversionary unit may, in instances where it determines that
21 the act or omission of an act for which a juvenile has been referred to
22 it involved no victim, or where it determines that the juvenile
23 referred to it has no prior criminal history and is alleged to have
24 committed an illegal act involving no threat of or instance of actual
25 physical harm and involving not more than fifty dollars in property
26 loss or damage and that there is no loss outstanding to the person or
27 firm suffering such damage or loss, counsel and release or release such
28 a juvenile without entering into a diversion agreement. A diversion
29 unit's authority to counsel and release a juvenile under this
30 subsection shall include the authority to refer the juvenile to
31 community-based counseling or treatment programs. Any juvenile
32 released under this subsection shall be advised that the act or
33 omission of any act for which he or she had been referred shall
34 constitute a part of the juvenile's criminal history as defined by RCW
35 13.40.020(~~(+9)~~) (7). A signed acknowledgment of such advisement shall
36 be obtained from the juvenile, and the document shall be maintained by
37 the unit, and a copy of the document shall be delivered to the
38 prosecutor if requested by the prosecutor. The supreme court shall
39 promulgate rules setting forth the content of such advisement in simple

1 language. A juvenile determined to be eligible by a diversionary unit
2 for release as provided in this subsection shall retain the same right
3 to counsel and right to have his or her case referred to the court for
4 formal action as any other juvenile referred to the unit.

5 (14) A diversion unit may supervise the fulfillment of a diversion
6 agreement entered into before the juvenile's eighteenth birthday and
7 which includes a period extending beyond the divertee's eighteenth
8 birthday.

9 (15) If a fine required by a diversion agreement cannot reasonably
10 be paid due to a change of circumstance, the diversion agreement may be
11 modified at the request of the divertee and with the concurrence of the
12 diversion unit to convert an unpaid fine into community service. The
13 modification of the diversion agreement shall be in writing and signed
14 by the divertee and the diversion unit. The number of hours of
15 community service in lieu of a monetary penalty shall be converted at
16 the rate of the prevailing state minimum wage per hour.

17 (16) Fines imposed under this section shall be collected and paid
18 into the county general fund in accordance with procedures established
19 by the juvenile court administrator under RCW 13.04.040 and may be used
20 only for juvenile services. In the expenditure of funds for juvenile
21 services, there shall be a maintenance of effort whereby counties
22 exhaust existing resources before using amounts collected under this
23 section.

24 **Sec. 2.** RCW 13.40.160 and 1997 c 338 s 25 and 1997 c 265 s 1 are
25 each reenacted and amended to read as follows:

26 (1) The standard range disposition for a juvenile adjudicated of an
27 offense is determined according to RCW 13.40.0357.

28 (a) When the court sentences an offender to a local sanction as
29 provided in RCW 13.40.0357 option A, the court shall impose a
30 determinate disposition within the standard ranges, except as provided
31 in subsections (2), ~~((+4))~~ (3), and ~~((+5))~~ (4) of this section. The
32 disposition may be comprised of one or more local sanctions.

33 (b) When the court sentences an offender to a standard range as
34 provided in RCW 13.40.0357 option A that includes a term of confinement
35 exceeding thirty days, commitment shall be to the department for the
36 standard range of confinement, except as provided in subsections (2),
37 ~~((+4))~~ (3), and ~~((+5))~~ (4) of this section.

1 (2) If the court concludes, and enters reasons for its conclusion,
2 that disposition within the standard range would effectuate a manifest
3 injustice the court shall impose a disposition outside the standard
4 range, as indicated in option C of RCW 13.40.0357. The court's finding
5 of manifest injustice shall be supported by clear and convincing
6 evidence.

7 A disposition outside the standard range shall be determinate and
8 shall be comprised of confinement or community supervision, or a
9 combination thereof. When a judge finds a manifest injustice and
10 imposes a sentence of confinement exceeding thirty days, the court
11 shall sentence the juvenile to a maximum term, and the provisions of
12 RCW 13.40.030(2) shall be used to determine the range. A disposition
13 outside the standard range is appealable under RCW 13.40.230 by the
14 state or the respondent. A disposition within the standard range is
15 not appealable under RCW 13.40.230.

16 ~~(3) ((Where a respondent is found to have committed an offense for
17 which the respondent declined to enter into a diversion agreement, the
18 court shall impose a term of community supervision limited to the
19 conditions allowed in a diversion agreement as provided in RCW
20 13.40.080(2)).~~

21 ~~(4))~~ When a juvenile offender is found to have committed a sex
22 offense, other than a sex offense that is also a serious violent
23 offense as defined by RCW 9.94A.030, and has no history of a prior sex
24 offense, the court, on its own motion or the motion of the state or the
25 respondent, may order an examination to determine whether the
26 respondent is amenable to treatment.

27 The report of the examination shall include at a minimum the
28 following: The respondent's version of the facts and the official
29 version of the facts, the respondent's offense history, an assessment
30 of problems in addition to alleged deviant behaviors, the respondent's
31 social, educational, and employment situation, and other evaluation
32 measures used. The report shall set forth the sources of the
33 evaluator's information.

34 The examiner shall assess and report regarding the respondent's
35 amenability to treatment and relative risk to the community. A
36 proposed treatment plan shall be provided and shall include, at a
37 minimum:

38 (a)(i) Frequency and type of contact between the offender and
39 therapist;

1 (ii) Specific issues to be addressed in the treatment and
2 description of planned treatment modalities;

3 (iii) Monitoring plans, including any requirements regarding living
4 conditions, lifestyle requirements, and monitoring by family members,
5 legal guardians, or others;

6 (iv) Anticipated length of treatment; and

7 (v) Recommended crime-related prohibitions.

8 The court on its own motion may order, or on a motion by the state
9 shall order, a second examination regarding the offender's amenability
10 to treatment. The evaluator shall be selected by the party making the
11 motion. The defendant shall pay the cost of any second examination
12 ordered unless the court finds the defendant to be indigent in which
13 case the state shall pay the cost.

14 After receipt of reports of the examination, the court shall then
15 consider whether the offender and the community will benefit from use
16 of this special sex offender disposition alternative and consider the
17 victim's opinion whether the offender should receive a treatment
18 disposition under this section. If the court determines that this
19 special sex offender disposition alternative is appropriate, then the
20 court shall impose a determinate disposition within the standard range
21 for the offense, or if the court concludes, and enters reasons for its
22 conclusions, that such disposition would cause a manifest injustice,
23 the court shall impose a disposition under option C, and the court may
24 suspend the execution of the disposition and place the offender on
25 community supervision for at least two years. As a condition of the
26 suspended disposition, the court may impose the conditions of community
27 supervision and other conditions, including up to thirty days of
28 confinement and requirements that the offender do any one or more of
29 the following:

30 (b)(i) Devote time to a specific education, employment, or
31 occupation;

32 (ii) Undergo available outpatient sex offender treatment for up to
33 two years, or inpatient sex offender treatment not to exceed the
34 standard range of confinement for that offense. A community mental
35 health center may not be used for such treatment unless it has an
36 appropriate program designed for sex offender treatment. The
37 respondent shall not change sex offender treatment providers or
38 treatment conditions without first notifying the prosecutor, the
39 probation counselor, and the court, and shall not change providers

1 without court approval after a hearing if the prosecutor or probation
2 counselor object to the change;

3 (iii) Remain within prescribed geographical boundaries and notify
4 the court or the probation counselor prior to any change in the
5 offender's address, educational program, or employment;

6 (iv) Report to the prosecutor and the probation counselor prior to
7 any change in a sex offender treatment provider. This change shall
8 have prior approval by the court;

9 (v) Report as directed to the court and a probation counselor;

10 (vi) Pay all court-ordered legal financial obligations, perform
11 community service, or any combination thereof;

12 (vii) Make restitution to the victim for the cost of any counseling
13 reasonably related to the offense;

14 (viii) Comply with the conditions of any court-ordered probation
15 bond; or

16 (ix) The court shall order that the offender may not attend the
17 public or approved private elementary, middle, or high school attended
18 by the victim or the victim's siblings. The parents or legal guardians
19 of the offender are responsible for transportation or other costs
20 associated with the offender's change of school that would otherwise be
21 paid by the school district. The court shall send notice of the
22 disposition and restriction on attending the same school as the victim
23 or victim's siblings to the public or approved private school the
24 juvenile will attend, if known, or if unknown, to the approved private
25 schools and the public school district board of directors of the
26 district in which the juvenile resides or intends to reside. This
27 notice must be sent at the earliest possible date but not later than
28 ten calendar days after entry of the disposition.

29 The sex offender treatment provider shall submit quarterly reports
30 on the respondent's progress in treatment to the court and the parties.
31 The reports shall reference the treatment plan and include at a minimum
32 the following: Dates of attendance, respondent's compliance with
33 requirements, treatment activities, the respondent's relative progress
34 in treatment, and any other material specified by the court at the time
35 of the disposition.

36 At the time of the disposition, the court may set treatment review
37 hearings as the court considers appropriate.

38 Except as provided in this subsection (~~((4))~~) (3), after July 1,
39 1991, examinations and treatment ordered pursuant to this subsection

1 shall only be conducted by sex offender treatment providers certified
2 by the department of health pursuant to chapter 18.155 RCW. A sex
3 offender therapist who examines or treats a juvenile sex offender
4 pursuant to this subsection does not have to be certified by the
5 department of health pursuant to chapter 18.155 RCW if the court finds
6 that: (A) The offender has already moved to another state or plans to
7 move to another state for reasons other than circumventing the
8 certification requirements; (B) no certified providers are available
9 for treatment within a reasonable geographical distance of the
10 offender's home; and (C) the evaluation and treatment plan comply with
11 this subsection (4) and the rules adopted by the department of health.

12 If the offender violates any condition of the disposition or the
13 court finds that the respondent is failing to make satisfactory
14 progress in treatment, the court may revoke the suspension and order
15 execution of the disposition or the court may impose a penalty of up to
16 thirty days' confinement for violating conditions of the disposition.
17 The court may order both execution of the disposition and up to thirty
18 days' confinement for the violation of the conditions of the
19 disposition. The court shall give credit for any confinement time
20 previously served if that confinement was for the offense for which the
21 suspension is being revoked.

22 For purposes of this section, "victim" means any person who has
23 sustained emotional, psychological, physical, or financial injury to
24 person or property as a direct result of the crime charged. "Victim"
25 may also include a known parent or guardian of a victim who is a minor
26 child unless the parent or guardian is the perpetrator of the offense.

27 A disposition entered under this subsection (~~((4))~~) (3) is not
28 appealable under RCW 13.40.230.

29 (~~((5))~~) (4) If the juvenile offender is subject to a standard range
30 disposition of local sanctions or 15 to 36 weeks of confinement and has
31 not committed an A- or B+ offense, the court may impose the disposition
32 alternative under RCW 13.40.165.

33 (~~((6))~~) (5) RCW 13.40.193 shall govern the disposition of any
34 juvenile adjudicated of possessing a firearm in violation of RCW
35 9.41.040(1)(b)(iii) or any crime in which a special finding is entered
36 that the juvenile was armed with a firearm.

37 (~~((7))~~) (6) Whenever a juvenile offender is entitled to credit for
38 time spent in detention prior to a dispositional order, the

1 dispositional order shall specifically state the number of days of
2 credit for time served.

3 (~~(+8)~~) (7) Except as provided under subsection (~~(+4)~~) (3) or
4 (~~(+5)~~) (4) of this section or RCW 13.40.127, the court shall not
5 suspend or defer the imposition or the execution of the disposition.

6 (~~(+9)~~) (8) In no case shall the term of confinement imposed by the
7 court at disposition exceed that to which an adult could be subjected
8 for the same offense.

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